* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 463 of 2007**

Judgment reserved on: May 17, 2007

% Judgment delivered on: May 23, 2007

Commissioner of Income Tax
Delhi (Central) – II
ARA Centre, E-2
Jhandewalan Extn.
New Delhi. ....Appellant

Through Mr. R.D. Jolly

Versus

Usha Iron & Ferro Metal Corporation Ltd.
B-11/100, Mohan Co-operative Industrial Area
Badarpur, New Delh. ...Respondent

Through None

WITH

2. **ITA No. 462 of 2007**

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Through None

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 16th June, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA No.915/Del/1999, ITA No. 2389/Del/2000 and ITA No.4366/Del/2004 relevant for the assessment years 1995-96 to 1997-98.

2. The Assessee carries on the business of manufacturing and production of CTD bars as also different types of iron rods. The Assessee used to procure the raw material, that is, billets from the open market. The Assessee decided to manufacture the raw material on its own and for this purpose it set up a Steel Melting Shop. In the course of setting up the Steel Melting Shop, the Assessee incurred substantial expenditure and this was

shown by the Assessee in its books as capital expenditure incurred. The Assessee also filed its returns on this basis.

3. Later the Assessee filed revised returns wherein it claimed that the expenditure was revenue expenditure having been incurred for the expansion of its business. On this basis, the Assessee claimed a deduction. The Assessing Officer did not accept the view canvassed by the Assessee primarily on the ground that the Assessee had shown the expenditure as being of a capital nature in its own books.

4. Feeling aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who accepted the view canvassed by the Assessee to the effect that mere capitalization of the amount in its books would not bind the Assessee. It was also held that the Steel Melting Shop was set up for production of raw material which was required by the Assessee for its existing business and, therefore, it was clearly an expansion of the existing business.

5. The Revenue then preferred an appeal before the Tribunal which

dismissed the appeal and that is how the Revenue is before us under Section 260-A of the Income Tax Act, 1961. We are of the view that the expenses incurred by the Assessee were in connection with an expansion of its business and not for the setting up of a new business and no fault can be found with the view taken by the Tribunal.

6. In C***ommissioner of Income Tax v. India Discount Co. Ltd., (1970) 75 ITR 191***, the Supreme Court expressed the view, though in a different context, that it is well established that a receipt, which in law cannot be regarded as income, cannot become so merely because the Assessee credited it to the profit and loss account. It follows from this that merely because the assessee showed the amount as capital expenditure in its books would not mean that it was bound by that statement and that it could not file a revised return claiming the amount as a revenue expenditure incurred in connection with the expansion of its existing business.

7. What is to be considered for deciding whether there is an expansion of an existing business or not was before the Calcutta High Court in ***Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Income-***

tax, (1992) 196 ITR 845. One of the considerations would be the purpose of the expenditure and its object and effect. If expenses are incurred in setting up a new business, it would be an expenditure incurred on capital account but where it does not amount to the starting of a new business, the expenses in connection therewith would be revenue expenses. In ***Kesoram Industries***, the assessee was a manufacturer of cement. In addition to its factory in Andhra Pradesh, it proposed to start another cement factory in Rajasthan. The expenses incurred related to exploring the feasibility of expanding or extending the existing business by setting up a new factory in the same line of business. It was held that the expenditure was unmistakably connected with the running of an existing business.

8. In ***Commissioner of Income Tax v. Goodyear India Ltd., (2000) 243 ITR 239***, a Division Bench of this Court relied upon ***Jonas Woodhead and Sons (India) Ltd. v. Commissioner of Income Tax, (1997) 224 ITR 342*** and concluded that it is now well settled that when expenditure is incurred for the expansion / extension or for the betterment of the product which was already being produced, and / or the improvisation made is part and parcel of the existing business, it is allowable as a revenue expenditure.

9. Following the law laid down by the Supreme Court as well as this Court, we find that what the Assessee had done was to spend some amounts in connection with his existing business in the sense that instead of purchasing billets from the open market, the Assessee decided to manufacture that raw material on its own. It was for this purpose that the Assessee set up the Steel Melting Shop. The expenditure incurred by the Assessee was towards improving its business and in a sense expanding or extending its business for the manufacture of its products, that is, CTD bars and iron rods.

10. Relying on ***India Discount***, we are of the opinion that merely because the Assessee treated the amount as a capital expenditure in its books, it would not be bound by it and relying on ***Kesoram Industries*** and ***Goodyear,*** there is no doubt that the expenditure incurred by the Assessee was for the expansion and betterment of its existing business. Manufacture of the raw material for the benefit of its existing business cannot, in our opinion, amount to setting up a new business.

11. Under the circumstances, we are of the view that no substantial question of law arises for consideration. The appeal is dismissed.

Madan B. Lokur, J

May 23, 2007
kapil/ncg

V.B. Gupta, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.